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Supreme Court, U.S.
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In The

Supreme Court of the United States

ALLEN B. GOTTLIEB,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION ONE. WHETHER THE DISTRICT COURT ERRED BY NOT ADDRESSING THE PRINCIPAL ARGUMENT AND SUBMISSION OF EVIDENCE AND/OR NOT RULING ON THE ADMISSIBILITY OF THE FBI SUPERVISORY SPECIAL AGENT, NOW RETIRED, AMICUS CURIE AFFIDAVIT, WHICH WAS SUBMITTED FOR RELIEF AS NEWLY DISCOVERED EXCULPATORY EVIDENCE UNDER RULE 60(b) AND (d).

QUESTION TWO. WHETHER THE CIRCUIT COURT SHOULD HAVE THE ARBITRARY AND SUBJECTIVE POWER TO STRIP A LITIGANT OF THEIR RIGHT TO DUE PROCESS AND EQUAL PROTECTION TO DEFEND THEMSELVES UNDER THE STATUTE OF LIMITATIONS, ON SERVICE AND JURISDICTION ISSUES, WHICH HAVE ALREADY BEEN RAISED AND VESTED IN THE LITIGANT AND WERE BEING HOTLY CONTESTED THROUGHOUT THE TRIAL; IN FAVOR OF THE CONFUSION OFFERED BY A MERE SUBJECTIVE "RULE OF LITIGATION CONDUCT."

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QUESTION THREE. WHETHER THE COURT OF APPEALS ERRED BY AFFIRMING THE DISTRICT COURT'S DECISION DENYING THE ADMISSIBILITY OF THE ORIGINAL BANK SANTANDER COMMITMENT WHICH WAS SUBMITTED AFTER ONE YEAR, FOR RELIEF UNDER RULE 60, AS THEIR AFFIRMATION INDICATES THAT THE FACTS REITERATOR WERE TOTALLY MISAPPREHENDED ON CRITICAL CHRONOLOGICAL EVENTS, A 10 YEAR *HIATUS* BETWEEN THE HIDING AND THE FINDING, AS WELL AS THE LIFE THREATENING CIRCUMSTANCES RECOLLECTED IN GOTTLIEB'S TESTIMONY AND HIS BRIEF.

QUESTION FOUR. WHETHER THE COURT OF APPEALS ERRED WHEN THEY MISAPPREHENDED GOTTLIEB'S REQUEST FOR A REVIEW OF THE DISTRICT COURT'S MASSIVE NUMBER OF PREJUDICIAL RULINGS AS A TOTALITY; WHEN THE APPELLATE COURT RULED THAT THE SINGLE INCIDENT "TEMPEST WHICH TOOK PLACE BETWEEN THEM" WAS INSUFFICIENT GROUNDS; HOWEVER, THAT INCIDENT WAS MERELY MEANT TO IDENTIFY A *STARTING POINT* WHEN SUCH BIAS IN FAVOR OF THE SEC BEGAN; WITH RULINGS SUCH AS DENYING EXPERT TESTIMONY, DENYING CROSS-EXAMINATION, NOT RULING ON FBI AMICUS CURIAE AFFIDAVIT SUBMITTED

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UNDER RULE 60, PERMITTING THE SEC TO WITHHOLD BELGIUM PROCESS SERVER'S REAL TRANSLATION AND SUBSTITUTE ANOTHER EVEN THOUGH IT WAS IN THEIR POSSESSION, AND STRIPPING GOTTLIEB OF HIS RIGHTS TO DEFEND HIMSELF ON JURISDICTION AND SERVICE ISSUES, ETC., AS SPECIFICALLY MENTIONED IN THE BRIEF WHICH ALL OCCURRED AFTER THE "TEMPEST" AND WHICH DENIED GOTTLIEB HIS RIGHTS TO EQUAL PROTECTION AND DUE PROCESS.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the final judgment of the United States Circuit Court for the Second District of New York and the affirmation of the United States Court of Appeals for the Second Circuit in this case.

OPINION AND JUDGMENT BELOW

The District Court's opinion and that of the Court of Appeals is annexed hereto, as well as the Court of Appeals refusal to rehear en banc, which is also attached, hereto as the District Court did not publish its opinion in this case.

STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

The United States Court of Appeals had subject matter jurisdiction over the instant appeal pursuant to 15 U.S.C. § 77v.

The District Court had jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities Act [15 U.S.C. § 77t(d)(1), 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [14 U.S.C. §§ 78u(d), 78u(e) and 78aa].

RELEVANT CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment 14.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Amendment 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; *nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb*; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

STATEMENT OF THE CASE WITH EMPHASIS ON CONSTITUTIONAL ISSUES

CASE 1. Longo Matter 1993-4: The *Longo* case and the SEC case are the identical situation. Longo filed an action against several persons which included Lagonia and Gottlieb, who cross-claimed. Gottlieb and Lagonia settled this case in 1995 with a Court Approved settlement, whereby Longo, Longo's attorney – Lagonia and Lagonia's attorney, Gottlieb – mutually released each other's claims and allegations and counter claims and Lagonia and Gottlieb returned **ALL** the fees they both earned; never retained a single penny for the work they did and the money they earned. The Court ***dismissed*** the cases against Gottlieb and Lagonia. The case proceeded against the other defendants.

Over 7 years passed! Over 22 months after the Statute of Limitations expired. The SEC, contended that Gottlieb was a fugitive, thus receiving enlargement after enlargement of time to serve Gottlieb under the Statute of Limitations. Gottlieb presented endless testimony and evidence showing that he lived openly with his family in Nassau, Bahamas and was active in several local and international organizations as well as maintaining all his connections to the U.S. such as insurance, credit cards and mail forwarding.

Gottlieb also presented evidence that the SEC had knowledge from the New York State Bar Association in their possession for 5 years that Gottlieb informed them that he was living and working in the

Bahamas, a small community where everyone knows everybody. This was confirmed as it was part of a letter addressed to the court, by the SEC Senior Counsel, Keith O'Donnell. Even though these facts are inconsistent with being a fugitive, the court with great bias never weighted this into their decision and continued to grant favored enlargements.

Gottlieb turned the court's attention to the fact that he and Lagonia settled this matter in 1995 with the same Judge's own Approved Settlement and that this case was DISMISSED against Gottlieb and Lagonia. The SEC's action was based upon the same facts and the same persons. The 5th Amendment does not permit a U.S. Citizen to be placed twice in jeopardy. There are no differences between the two cases except the addition of the Plaintiff's name, "SEC"!

At the time Gottlieb was served, this action was on-going against many persons, including Lagonia, alleging that everyone conspired together somehow or other. This action included people Gottlieb never represented, nor ever met, nor ever heard of in his life and conversely, who never met him either.

Gottlieb objected vigorously about the enlargements granted the SEC to serve him, including an incident of "Fraud on the Court," concerning the SEC's fraudulent translation being submitted deceitfully to the court, while all the time, the SEC had the proper translation in their possession. When this was discovered, the court should have dismissed the case against Gottlieb, or reversed its ruling, however, the

court prejudicially glossed over the issue and denied Gottlieb his equal protection and due process rights. Gottlieb continued to contest on Statute of Limitations questions, concerning Service and Jurisdictional Issues at every opportunity and the record so reflects.

Gottlieb asked permission to cross-examine the process servers in Belgium and the USA, after discovering several misidentifications between the real translation and the phony one submitted to the Court while the SEC unlawfully withheld the real one. However, the court with extreme prejudice apparently denied this motion.

Gottlieb also timely filed his 4th affirmative defense again showing that he intended to pursue his Statute of Limitations defenses.

Gottlieb, a single practitioner, served exclusively as Legal Counsel for his client, Lagonia, a mere broker in the transaction. As stated before, Gottlieb and Lagonia both settled this matter in 1995 having **returned All fees** that they earned and never retained a single penny. The SEC alleged Gottlieb had Scienter, despite the more than sufficient evidence in the record proving the contrary, thus the court showed favoritism to the SEC and denied Gottlieb Equal Protection and Due Process.

Gottlieb testified about his first-hand experiences when he was invited into the trading room and personally witnessed trading. Gottlieb, as attorney, was provided documentation including a legal annotated opinion by one of Chicago's leading law firms

Bell, Boyd and Lloyd together with 20 pages of back up material, while his client was doing business with a subdivision of Ford Motor Company.

These documents included the Law Firm's Confirmation that TWO Prime Bank Trades actually took place and was verified to him in writing, which documents were all entered into the record. The law firm also provided Gottlieb with the ultimate proof, a copy of a key tested Letter of Credit issued by Harris Bank & Trust of Chicago.

Also, Gottlieb testified that he personally obtained, almost the exact same Bank Commitment to trade Prime Bank Instruments from the New York, Park Avenue Branch of Bank Santander, which was drafted by the Bank's legal department and signed by the Comptroller, Alfred Perales. Gottlieb testified that he used the Bank Santander Commitment to draft the Longo Commitment. Both the personal experience with Bell, Boyd and Lloyd and the personal experience with Bank Santander provided significant evidence to substantiate that Gottlieb had knowledge in his possession sufficient to form a reasonable belief that trading was possible and could take place, prior to the Longo Matter.

Thus Gottlieb had sufficient evidence in the record to prove that Gottlieb lacked the ingredient necessary for Scienter. Yet the court prejudicially concluded to the contrary, thus denying Gottlieb Equal Protection and his due process rights.

The court found Gottlieb liable for about $3 Million. The award was erroneously based on statutes which require restitution and disgorgement to deprive a wrongdoer of his unjust enrichment. However, Gottlieb and Lagonia settled this matter years ago and disgorged all fees earned with interest, never retaining a single penny. Hence, the calculations submitted by the SEC were contrary to the purposes of the statutes, because disgorgement is remedial and not punitive and the court was limited to award only the amount retained with interest by which the wrongdoer profited, something which was not possible in this instance, since all fees earned where returned and this left "0." Elementary math substantiates that Interest on "0" is and will remain forever "0." The award was calculated improperly, yet the court accepted it without question and over vigorous objections, thus taking property unlawfully and denying Gottlieb equal protection and his Due Process.

In the Longo matter, Lagonia was introduced to Longo by Wally Stewart, Longo's Agent. Gottlieb was retained once and represented Steward and his partner, now deceased, who was General Manager of the giant Bechtel Corporation in a real estate transaction in Switzerland. After Gottlieb did due diligence on the group, he recommended that the Steward Group discontinue any further dealings with the group. Longo knew that Steward knew Lagonia and Gottlieb, but Longo was not told about Stewart's real

estate transaction where Gottlieb served as their legal representation.

Over the SEC allegations that Gottlieb was obligated to inform Longo of his prior representation, Gottlieb claimed that it was confidential and privileged and that Gottlieb was under no obligation to Longo whatsoever, as he was representing Lagonia not Longo, who was adequately represented by Feldman's major New Jersey Law firm.

Lagonia was retained by Longo solely for the purpose of furnishing a Trustee Bank. Lagonia retained Gottlieb, who drafted the agreements, based on the Bank Santander Commitment in his possession. This agreement was presented in the Key West first and only meeting with Longo and Longo's attorney, Feldman, who was ever present. During that meeting, Longo's attorney amended the agreement in several areas and it was finally signed. At this meeting, Gottlieb stated frankly that he could not trade bank instruments. This was confirmed by Lagonia and Longo's attorney. Therefore, after that frank disclosure, it would be foolhardy for anyone to depend on Gottlieb for anything having to do with trading bank instruments.

The sole purpose of Lagonia's conditional retainer fee agreement, which included a copy of the Trustee Bank's commitment, was to perform as a Trustee Bank for the Longo Group; to furnish a "STANDBY LETTER OF CREDIT (space added) TRADING FACILITY," for the exchange of documents, which of

course has nothing to do with the responsibility of procuring or delivery of bank instruments, or any other part of Longo's transaction.

The Trustee Bank, Eastland American Bank (EAB), was introduced by Gottlieb only after Gottlieb did his due diligence. No funds were earned for the introduction. Gottlieb personally visited EAB in their bank office in Nassau, Bahamas, and met with their General Manager. Gottlieb personally visited the Department of Banking in Nassau, Bahamas, and met with their Compliance Officer, who provided EAB with excellent references.

Then Gottlieb went even further by visiting their gracious offices in New York City, where a plaque hung at the entrance, stating that the offices were either SBA or SBIC approved Government lenders (Gottlieb does not remember which one). Gottlieb met personally with the CEO and President of the Bank, Salim El-Hage. Gottlieb received the bank's financial audited statement and spoke with the accountant by phone after which he determined that EAB was too small a bank to complete a transaction of this size.

Mr. El-Hage told Gottlieb that he agreed and that the transaction would be handled by their correspondent bank, American Express in Paris, France. Gottlieb insisted upon meeting with the bank officer in person to verify the representations. Gottlieb flew to Paris with Longo's group and Lagonia. Gottlieb was personally brought to the bank and introduced to EAB correspondent bank's officer. The officer was

presented with the bank commitment. He already had a copy and compared them. He then agreed to perform the Longo transaction for the benefit of their correspondent bank, EAB.

The bank officer then provided a signed instruction to Gottlieb and to El-Hage with the bank officer's name and contact information of the person who would personally handle the transaction for Longo. This same document was turned over to Longo, his group and attorney, when they met the chairman of EAB, during a two day meeting at the EAB's offices in Paris, during which time they all had direct negotiations and plenty of time to perform due diligence. Longo received and accepted the bank's commitment on the second day of meetings.

Even though the SEC deceitfully told the Court that it was a "CREDIT FACILITY," by improperly separating the last word of "LETTER OF *CREDIT*" and then deceitfully combining it with balance of the words in the commitment *CREDIT* (*space now added*) *FACILITY*, so that it appeared to be a Credit Facility. However, the truth is that neither EAB, or American Express Bank ever agreed to furnish any credit, or incur any risk other than to act as a normal trustee bank. Nothing was mentioned about Credit, nor was it a requirement of the agreement, as the bank only agreed to act as a trustee bank and nothing more.

Once Longo and his attorney examined and accepted the Bank's Commitment, they were asked to sign a letter authorizing Gottlieb to release the 1%

(one percent) performance based fee to Lagonia. This fee was held in Gottlieb's attorney IOLA account and was payable against satisfactory performance only. That meant that if Longo was not satisfied, he did not have to pay Lagonia anything.

From this 1% Fee, Lagonia ordered Gottlieb to pay EAB One-third of the fee, directed Gottlieb to retain ⅓ as his legal fee and directed Gottlieb to release the ⅓ balance of the fee to himself.

Unknown to Gottlieb or Lagonia, this trading of bank instruments program and transactions was already in place between a New York Attorney Barday and his client Michael Keigh, persons Gottlieb never heard of until after the case was started. It appeared that Longo was depending on an affidavit of Attorney Barday, espousing his client's ability to trade prime bank instruments.

The EAB trustee bank commitment, just like the Bank Santander commitment, stated that the bank was required to verify the validity of the bank commitments and be ready to act as trustee bank for the exchange of documents under good value. This commitment included all "Letters of Credit or prime bank guarantees," labels furnished to Gottlieb by Longo to use when he drew the agreement.

As further identification and clarification, Gottlieb added a description of Prime Bank Guarantees to the agreement as having to be issued by the top 100 banks worldwide. The trustee bank agreed that after receiving the bank instruments under good value,

they would pay out the difference between the purchase price and selling price as directed by Longo. Neither Gottlieb nor Lagonia were involved in any aspect of the transactions other than furnishing the trustee bank, who was also to be used in order to keep the parties separated thereby not permitting them to conduct business directly.

The bank commitments and bank instruments which Attorney Barday and his client Keigh were supposed to furnish to the trustee bank to verify never arrived and the anticipated transactions never occurred. Despite a multitude of extensions of time offered by EAB to conclude the transaction, nothing ever materialized. Eventually, Longo brought the action mentioned above which was settled by Lagonia and Gottlieb with the return of the all fees in full and not gaining one penny for all their efforts.

The SEC utilized the services of an expert witness who never ventured outside of the place he taught to prove that trading in Prime Banking Instrument was not possible. However, when Gottlieb wanted his expert witness to testify, Mr. Sousa, a seasoned attorney with deep educational credentials and many personal experiences in trading (discounted) Bank Instruments, the court denied Gottlieb the opportunity for his expert to testify and rebut the testimony of the SEC expert witness therefore denying Gottlieb the equal protection and due process rights to defend himself.

Mr. Sousa already published his affidavit on Gottlieb's "SEC v. Gottlieb" website and his testimony would have been devastating to the SEC's position. The court and the SEC were most probably aware of the contents of the affidavit and when they prejudicially ruled that Sousa could not testify on behalf of Gottlieb's position, they denied Gottlieb equal protection and his due process.

When the identical facts of the SEC case were brought by the SEC over 7 (seven) Years Later, the court prejudicially held Gottlieb responsible for nearly $3 Million and dismissed the case against Lagonia, even though Gottlieb followed instructions and was further removed from the incidents in question than his client.

Near the very end of the trial, with service and jurisdictional issues being vigorously contested and objections flying and an enormous amount of material in the records already, both the SEC and Gottlieb's attorney were asked by the court to provide a "Joint Letter" stating their positions.

Gottlieb's attorney naively sent his views to the SEC, who deceitfully submitted the Joint Letter on their own stationary without indicating proper headings showing that the letter reflected the positions of both parties.

The court apparently misidentified the Joint Letter in the court's Order of July 8th as the "Plaintiff's (SEC) Letter" and with extreme favoritism for the SEC, ruled that Gottlieb's position was not clear

enough in the Joint Letter. Gottlieb's attorney reiterated to the judge that his position was stated in the Joint Letter and therefore Gottlieb did not abandon or waive his rights to defend himself on the Statute of Limitations service and jurisdictional issues.

Gottlieb's position was stated in the Joint Letter **"Because Mr. Gottlieb was ultimately properly served,"** i.e., the statement, although not eloquently put, certainly was sufficient to indicate that Gottlieb was not abandoning or waiving his rights, especially when his counsel confirmed to the judge that his position was already stated in the misidentified Joint Letter, as Gottlieb was ***challenging the timeliness of service*** *and not the manner of service.*

Certainly Gottlieb was not walking away from his right to continue to defend himself at this critical point in the trial, and any ruling to the contrary is against the weight of evidence and the fact that service and jurisdictional issues were still being vigorously and continuously contested. Any ruling which would deprive Gottlieb of his right to defend himself would be contrary to the evidence in the record and would be clear bias and extreme favoritism to the SEC and clearly it would deny Gottlieb his rights to equal protection and due process.

However, the court ruled unjustified and with extreme bias that Gottlieb abandoned his right to defend himself on jurisdictional and service issued. The Supreme Court is requested to review this decision in light of the entire record as Gottlieb was

thereafter denied the right to Equal Protection, which he is entitled to.

Gottlieb is especially entitled to defend himself fully against the SEC, with the endless resources of an Agency of United States Government at their disposal. Additionally, this ruling is so prejudicial that it would deny Gottlieb his due process rights to defend himself and to have his day in court and to receive a fair hearing under the 14th and 5th Amendments to the Constitution of the United States.

One year after the decision and 10 years after the incident, Gottlieb's wife discovered the Original Bank Santander signed commitment. The reasons for not finding it sooner were laid out in minute detail in the brief as Gottlieb intentionally hid the Bank Commitment in fear of his life and that of his family, due to the strange death of the associate of a CIA Agent who Gottlieb was assisting. This evidence, if permitted into the record, would document that Gottlieb lacked any trace of Scienter. The bank commitment was submitted to the court as newly discovered exculpatory evidence and requested relief under Rule 60 to prevent a grave miscarriage of justice, but the court denied the request. The Court of Appeals confirmed the lower court's decision but clearly misapprehended the circumstances of the brief and the sections of relief under the conditions of Rule 60 which Gottlieb was requesting.

Can the Supreme Court imagine how important an affidavit of a **Supervisory FBI Special Agent**

and star recipient would be if presented by the SEC? Well this affidavit was presented by the FBI to set the record straight and to tell the truth and was in support of Gottlieb's position.

This affidavit was submitted to the court as newly discovered exculpatory evidence under Rule 60 as evidence which could not be discovered prior to the one year limitation on certain sections. The FBI Special Agent's Amicus Curiae Affidavit was offered to the court to present the **truth**.

Gerald Forrester, the FBI Special Agent who was the Supervisory Agent in charge of the FBI offices in Nassau, Bahamas, during the years the SEC pretended that Gottlieb was a fugitive to deceive the court into granting enlargements for additional time for service.

The FBI Affidavit basically states that Gottlieb lived openly in the Bahamas and was personally known by the Supervisory Agent as he met Gottlieb at the American Men's Club luncheon and he continued to see Gottlieb, who was an active member of the community during the years of tenure 1975-2001, which included the years the SEC alleged Gottlieb was a fugitive.

The affidavit also stated that Gottlieb could have been located in ***24 HOURS*** and that this location resource was available to the SEC, who never contacted the FBI concerning locating Gottlieb. This is not in keeping with the 7+ years it took the SEC to

serve Gottlieb, nor in the mislabeling of Gottlieb as a fugitive.

Unbelievable and with extreme prejudice to Gottlieb, the Circuit Court and the Appellate Court never ruled on this Rule 60 submission and never even commented or mentioned the FBI Amicus Curiae Affidavit. This inaction on the part of the court effectively prevented Gottlieb from defending himself and denied Gottlieb his due process and equal protection by not considering this important evidence and not even bothering to order an evidentiary hearing, or other appropriate action. Thus these inactions of the court, completely disrespecting the FBI Special Agent and Star Recipient's voluntary submission in fulfillment of his 30 year dedicated service record for and obligations to upholding the truth and proper law enforcement criteria.

The SEC should not have been rewarded for dropping the ball and this continuous granting of enlargements and special requests in the face of evidence to the contrary, proving that Gottlieb was not a fugitive has resulted in denying him the right to defend himself by stripping his rights away from him on Jurisdiction and Service issued which were statutorily vested with him. The rulings in this matter are unsupported by the facts and have resulted in denying Gottlieb the Equal Protection and Due Process Rights provided to him as a citizen of the United States under the 5th and 14th Amendments to the Constitution of the United States.

CASE 2. Meyers and Schwartz Matter (1993). In this same case, Gottlieb was again denied his right to defend himself when the court arbitrarily ruled that he waived his rights to defend himself under the statute of limitations on service and jurisdictional issues, applied to both cases.

The facts are that Meyers and Schwartz were personally not known to Gottlieb, who never met them, never communicated with them and was never retained by them to do anything for them, and they testified to the same facts. Meyers and Schwartz signed a contract with Stewart and nowhere in that Agreement is there any mention or inference to Gottlieb.

It is a complete mystery and extremely prejudicial for the court to have ruled that somehow or other, Gottlieb was liable for received $500,000 Thousand from Schwartz or Meyers, when the SEC never furnished any documentation or other evidence which would even remotely link Gottlieb to any money sent to him or received by him. There was no chain presented, and we all know that Banks only move with written instructions, especially when hundreds of thousands of dollars are involved.

The only thing submitted by the SEC was Gottlieb's Bank statement showing that $325,000 was received in error and returned to the sending bank. It was marked "Withdrawal/Adjustment" which indicates that it was a **Bank Mistake**, because **no fee** was charged. It was clearly a bank error as a review

of the entire bank statement reflects that a fee is always charged for all other "Withdrawals/Adjustments."

The SEC never presented any evidence of documents showing that there was any relationship between money sent to Stewart by Meyers and Schwartz or to Gottlieb and the money marked "Withdrawal/Adjustment" which was never received into Gottlieb's bank account. The SEC never even presented any evidence of where the money was sent to, nor where the money was sent back to. The SEC presented no bank officers to confirm their allegations and no documents to show any link to the $325,000 received in error. . . . just wild and unsupported allegations!

When the Circuit Court surprisingly ruled that Gottlieb was responsible for $500,000, which amount is not mentioned anywhere, anyplace and is thus more than bias and prejudicial, it is ridiculous. There is absolutely nothing in evidence that would have suggested that Gottlieb received any money from people he didn't know and who didn't know him.

The fact that Gottlieb was denied a fair trial in the Meyers and Schwartz matter, his due process rights to defend himself and equal protection against a bias and prejudicial court, who extremely favored the SEC, thus denying Gottlieb his rights under the 5th and 14th Amendments to the Constitution should be quite evident. There is little else to be said about this issue, except it is apparent that the SEC is not

and was not held to the same standards of evidence and jurisprudence as the court was sworn to uphold.

REASONS FOR GRANTING THE PETITION

QUESTION ONE. WHETHER THE DISTRICT COURT ERRED BY NOT ADDRESSING THE PRINCIPAL ARGUMENT AND SUBMISSION OF EVIDENCE AND/OR NOT RULING ON THE ADMISSIBILITY OF THE FBI SUPERVISORY SPECIAL AGENT, NOW RETIRED, AMICUS CURIE AFFIDAVIT, WHICH WAS SUBMITTED FOR RELIEF AS NEWLY DISCOVERED EXCULPATORY EVIDENCE UNDER RULE 60(b) AND (d).

Courts are obligated to reach and to decide all colorable issues presented by a party, including those raised in Rule 60(b) motions, and the failure to do so mandates reversal for further proceedings. *See, e.g., United States v. Villegas-Miranda*, slip op. at 5, 2009 WL 2616039 (7th Cir. Aug. 27, 2009) (vacating criminal sentence because the defendant's sentencing argument "had legal and factual merit, and, given that it was one of his principal arguments ... the sentencing court needed to address it"); *Berry v. Roberts*, 85 F.3d 625 (5th Cir. 1996) ("In light of the extraordinary circumstance that the district court failed to address a potentially meritorious legal argument ... the district court abused its discretion by denying the Rule 60(b) motion."). *See also Oliver v. Michigan State Bd.*

***of Ed.*, 508 F.2d 178, 181 (6th Cir. 1974) ("Of course, in order to make its ultimate determination on the issue of intention, the court must fully consider the evidence and arguments presented by all the parties"). Rule 60(b)(4), 60(b)(6), 60(d)(1) and 60(d)(3) all seem to be relevant.**

A. WHETHER THE DISTRICT COURT ERRED BY NOT ORDERING AN EVIDENTIARY HEARING, OR ANY OTHER APPROPRIATE EXPLORATORY, OR INVESTIGATIVE ACTION(S) TO DETERMINE IF GOTTLIEB WAS DENIED HIS RIGHT TO DEFEND HIMSELF ON SERVICE AND JURISDICTIONAL ISSUES.

B. WHETHER THE DISTRICT COURT ERRED BY NOT DETERMINING IF GOTTLIEB'S POSITION, THAT THE STATUTE OF LIMITATIONS HAD EXPIRED AND THE ENLARGEMENTS GRANTED TO THE SEC BASED UPON THEIR ERRONEOUS ALLEGATIONS THAT GOTTLIEB WAS A FUGITIVE WERE WARRANTED, OR UNWARRANTED.

C. WHETHER THE DISTRICT COURT ERRED BY NOT DETERMINING IF GOTTLIEB'S POSITION, THAT THE SEC JUST DROPPED THE BALL AND THEREFORE THE STATUTE OF LIMITATIONS RAN ITS COURSE PRIOR TO THE SEC SERVING GOTTLIEB.

The most significant and impartial evidence supporting Gottlieb's position that the Statute of Limitations had **EXPIRED** and the SEC was not entitled to

enlargements based upon their false, deceitful and fraudulent allegations that Gottlieb was a fugitive as this was the irrefutable and impeccable credentials and evidence in the form of an **Amicus Curiae Affidavit, voluntarily submitted by FBI Supervisory Special Agent and star recipient, Gerald Forrester**. See App. 24.

A. After reading the facts in the matter of 98-Civil-2628, FBI Special Agent and Star Recipient Mr. Gerald Forrester submitted an Amicus Curiae Affidavit stating that **"because I believe it is important that the court knows the truth in this matter."** This affidavit was given to Gottlieb by the FBI Special Agent to submit to the court. Gottlieb submitted the evidence to the court under Federal Rules of Civil Procedure to request relief from a Judgment or Order under Rule 60 as newly discovered evidence which was not available until after one year.

B. FBI Special Agent and Star Recipient, Gerald Forrester was the FBI's Supervisory Special Agent in charge of the Nassau, Bahamas office during the years 1994-2001, during the time the SEC alleged that Gottlieb was a fugitive, thus **confirming Gottlieb's position** that he lived openly and normally with his family and therefore the Statute of Limitations expired and the SEC should not have been granted enlargements.

C. One can only imagine, the significance and importance the SEC would put on a similar FBI Affidavit, if it was submitted to support their allegations. However, the court prejudicially avoided any reference to the FBI Affidavit in their decision and never bothered to even order

an evidentiary hearing on these decisive points, to determine the truth.

D. You would think that a Supervisory FBI Special Agent of 30 years and star recipient Mr. Gerald Forrester would deserve the respect to be heard by the court! However, the affidavit of this top law enforcement officer, who took the high, ethical and moral road, was denied his right to be heard and to testify to the true facts as identified in his affidavit.

E. FBI Special Agent Gerald Forrester swears under penalty of perjury that he could have **located Gottlieb in "24 hours,"** *instead of the more than 7 (Seven) years it took the SEC.* Further, the Affidavit confirms that the FBI offers this location resource to the SEC, but the SEC never requested it.

F. Special Agent Forrester confirms that he personally knew the whereabouts and location of Mr. Gottlieb from the years 1997-2001 and that he personally met Mr. Gottlieb at the American Men's Club luncheon, actions which are absolutely contrary to the SEC's allegations that Gottlieb was a fugitive.

QUESTION TWO. WHETHER THE CIRCUIT COURT SHOULD HAVE THE ARBITRARY AND SUBJECTIVE POWER TO STRIP A LITIGANT OF THEIR RIGHT TO DUE PROCESS AND EQUAL PROTECTION TO DEFEND THEMSELVES UNDER THE STATUTE OF LIMITATIONS, ON SERVICE AND JURISDICTION ISSUES, WHICH HAVE ALREADY BEEN RAISED AND VESTED IN THE LITIGANT AND WERE BEING HOTLY CONTESTED THROUGHOUT THE TRIAL; IN FAVOR OF THE CONFUSION OFFERED BY A MERE SUBJECTIVE "RULE OF LITIGATION CONDUCT."

A. ELIMINATE SUBJECTIVE CONFUSION AND MAYHEM BY PROVIDING A MEANINGFUL RULE OR CLEAR STANDARD.

To prevent a litigant from unintentionally losing his due process rights to defend himself and from being denied a fair trial, the Supreme Court is asked to establish a meaningful rule and/or clear standard by which an attorney, litigant, and judge may point to which accurately reflects whether or not a litigant has "abandoned or waived" his statutory defenses. A mere rule of litigation conduct would appear to be totally insufficient to cause such an onerous conclusion, especially if the facts do not warrant such a ruling.

Setting such a rule or standard would eliminate confusion caused by a subjective and arbitrary determination and would thereby protect a litigant's

statutory and constitutional rights to defend themselves and prevent them from being ripped out from under them by a surprise ruling that they were "waived or abandoned," thus denying the litigant a fair trial and their day in court.

B. DEFENSE RIGHTS CAN BE EASILY PROTECTED BY *MIRANDA* OR BY ASKING A SIMPLE QUESTION.

If the court provided a litigant with a straightforward warning, similar to **"*Miranda*," or a simple question, "Do you intend to abandon or waive your defenses . . . ?"** A simple **"Yes" or "No"** would totally eliminate any confusion, time wasting arguments, appeals, pointing fingers, allegations of bias, and prejudice, error, and railroading.

C. DENYING A LITIGANT THE RIGHT TO DEFEND HIMSELF SHOULD BE SUPPORTED BY OBLIGATORY FINDINGS AND GROUNDS IN THE RECORD AND NOT SUBJECTIVE DETERMINATIONS AND UNCLEAR ASSUMPTIONS WHICH ARE CONTRARY TO THE INTENT OF THE LITIGANT.

In the ***Gottlieb v. SEC*** matter, the Court pulled the rug out from beneath Gottlieb and stripped him of his due process rights to defend himself and to receive a fair trial when the court ruled that Gottlieb **abandoned or waived** his due process rights. Thereafter, Gottlieb could not continue to defend

himself utilizing the Statute of Limitations on service and jurisdictional issues even though many issues were already in the record and being hotly contested.

Clearly Gottlieb had no intention of abandoning or waiving his rights! Gottlieb was nearly at the end of the trial, when the court made an apocalyptic error, which prejudiced Gottlieb beyond repair when it erroneously concluded that he abandoned or waived his due process rights to defend himself on service and jurisdictional issues afforded under the Statute of Limitations.

Without any substantial reasoning, or any apparent indication that Gottlieb intended to waive or abandon his right to defend himself on jurisdictional and service issues and over the objections of counsel, against the weight of numerous substantive facts, evidence, testimony, arguments, and objections already in the record, including the filing of the Affirmative Defense of the Statute of Limitations and several unresolved hotly-contested issues. The facts which are specifically enumerated hereinafter prove that Gottlieb was vigorously contesting his due process rights when the court ruled to the contrary.

After this catastrophic ruling, Gottlieb was denied his constitutional due process right to defend himself, his day in court, equal protection under the law, and his right to a fair trial.

D. THE RIGHT TO DEFEND ONESELF IS BASIC TO A FAIR TRIAL AND SHOULD NOT BE EASILY LOST ONCE THE DEFENSE HAS BEEN RAISED AND CONTESTED AND PERHAPS MAY BE TO SOME EXTENT CONSIDERED VESTED REQUIRING A GREATER DEGREE OF CERTAINTY BEFORE THE COURT CAN RULE THAT THEY HAVE BEEN ABANDONED OR WAIVED. THIS IS ESPECIALLY TRUE IF THE ISSUES HAVE BEEN ADDRESSED OR RAISED REDUNDANTLY OR REPETITIVELY BY OBJECTION, IN WRITING, BY MOTION OR BRIEF, AFFIRMATIVE DEFENSE, OR WITH THE SUBMISSION OF EVIDENCE AND/OR TESTIMONY.

We firmly believe that Gottlieb's defenses **already vested** during some point during his vigorous and repetitive arguments on various jurisdictional and service issues. Therefore, before the court could come to the conclusion that Gottlieb waived or abandoned his right to defend himself, it would only seem fair and plausible that there be at least some measure of proof positive that Gottlieb intended to abandon or waive or walk away from his defenses.

E. DEFENSES, RULE 60 RELIEF BY SUBMITTING AMICUS CURIAE FBI AFFIDAVIT, BANK SANTANDER COMMITMENT DOCUMENTS, OBJECTIONS, EVIDENCE, BRIEF AND TESTIMONY ALREADY IN THE RECORD SHOWING THAT GOTTLIEB WAS HOTLY CONTESTING SERVICE AND JURISDICTIONAL ISSUES UNDER THE STATUTE OF LIMITATIONS, THUS, THE COURT'S RULING THAT GOTTLIEB ABANDONED OR WAIVED HIS DEFENSES ON THOSE ISSUES WAS OVERREACHING AND EXTREMELY BIASED.

Further proof and examples which already are being contested and are in the record that Gottlieb did not abandon or waive his rights to defend himself on jurisdictional and service issues and that he continued to defend himself vigorously are as follows; when Gottlieb filed his Answer, he stated his 4th affirmative defense as the Statute of Limitations, stating that over 7 (Seven) years had lapsed since the incident in question. The SEC countered that Gottlieb was a fugitive and that was the reason for granting the enlargements and proceeded to tell their story, which was based upon a fraudulent translation of a Belgium Process Server and other deceptive tactics. Gottlieb presented a contrary story and submitted a landslide of testimony and evidence that he was not a fugitive.

Gottlieb testified and presented evidence that he lived openly in the Bahamas having two children

attending school, one of which has Downs Syndrome at the only special needs school in Nassau; Gottlieb submitted testimony and evidence that he served as Director of the Jewish Congregation in Nassau, was an active Committeeman for the Special Olympics, Member of the American Men's Club, and was on several committees with the Rotary Club. These are not the activities of a fugitive.

Gottlieb maintained an office in the Bahamas where his name was printed on the directory; further, he maintained his same USA credit cards, same USA insurance and even maintained a USA mail forwarding company, Mail Box Etc., to forward his mail to him. Gottlieb presented evidence that the SEC identified, or should have identified the Mail Boxes Etc. forwarding company, but never bothered to make a simple request for his forwarding address. Gottlieb stated that he used the giant Mayflower Moving Company to relocate to the Bahamas and continued to use the same USA Bank Accounts while he was living and working in Nassau, Bahamas. Again, this is not consistent and extremely contradictory with being an alleged fugitive.

These are not the actions of a litigant who is contemplating waiving or abandoning his rights to defend himself on service and jurisdictional issues under the statute of limitations!

Gottlieb's lawyer objected under the Rule 4(f) extension as well as the 120-day 4(m) extension in his arguments to the District Court and the depositions

of the (Federal) agents, if permitted would reveal the insufficiency of their efforts on the motions to (extend) time, or for service outside the U.S. under Rule 4(f).

F. GOTTLIEB'S LOCATION WAS GIVEN TO THE NEW YORK STATE BAR ASSOCIATION.

Very important is the fact that Gottlieb informed the **NYS Bar Association** that he was living in the Bahamas. **Mr. Keith O'Donnell, Senior Counsel for the SEC, had the information in his possession for *five years*.** This was brought to the court's attention and was part of the evidence in the record, i.e., **Mr. O'Donnell's Declaration to the court of November 20, 1998, page 3, paragraph 5**. Fugitives do not register their location with the Bar! Clearly the SEC dropped the ball and permitted the Statute of Limitations to expire and should not be rewarded with enlargements.

G. PROCESS SERVER CROSS-EXAMINATION DENIED.

Gottlieb questioned the Belgium's process server's affidavit and authority and found several conflicting statements concerning the manner and timeliness of service. Gottlieb requested permission to **cross-examine the process servers, but was apparently denied this request**.

H. FRAUD ON THE COURT BY THE SEC WITHHOLDING EVIDENCE IN THEIR POSSESSION AND SUBMITTING FALSE EVIDENCE TO GAIN ENLARGEMENT OF TIME TO SERVE GOTTLIEB.

Gottlieb accused the SEC of a **"Fraud on the Court"** because the SEC intentionally submitted **fraudulent translations** of the Belgium process server to the court, while all along having the ***real translations in their possession***. The court accepted the translations for their full value and truth from an Agency of the Federal Government, without an affidavit of truth, or any other underpinnings and over Gottlieb's objections.

Based on this fraudulent translation, the court granted the SEC an enlargement to serve Gottlieb under the Statute of Limitations. However, it was a grave error, to the extreme prejudice of Gottlieb, to reward the SEC for their fraudulent behavior ESPECIALLY because the SEC had the real translation in their hands all along and only submitted it to the court after the court made its ruling in their favor.

Gottlieb vigorously objected, but the court just ignored the objections and glossed over this fraudulent act, when they should have **dismissed** the case against Gottlieb at that very second the truth of these deceitful facts was discovered.

It is hard to imagine the court permitting an Agency of the United States Government to perpetrate this Fraud on the Court once this intentional

act was discovered. Certainly, if any other litigant would have intentionally deceived the court, the outcome would have been followed by a deserving outrage from the bench, contempt, 100% reversal of its ruling, and probably more. But the court did nothing! This is unbalanced treatment and not equal protection under the law.

I. IT WAS AN ERROR TO STRIP GOTTLIEB OF HIS JURISDICTIONAL AND SERVICE DEFENSES UNDER THE STATUTE OF LIMITATIONS ON THE BASIS OF A MIS-IDENTIFIED "JOINT LETTER" IN FAVOR OF A MERE SUBJECTIVE RULE OF LITIGATION CONDUCT, WHICH CERTAINLY DID NOT APPLY IN THIS INSTANCE AS THE ISSUES WERE BEING CONTESTED AND HOTLY LITIGATED.

Then one is forced to ask, why did the court conclude that Gottlieb walked away from his jurisdictional and service issues which were constantly under attack throughout the trial?

The problem occurred when the court asked both sides to present their positions. Gottlieb's attorney innocently gave his position to the SEC to form the Joint Letter. The SEC deceptively and wrongfully submitted the positions of both sides on the SEC's Letterhead, without indentifying that Gottlieb's *position was stated in that Joint Letter.*

The Judge was clearly confused when she issued her order on July 8th, wrongly identifying the Joint Letter as the SEC's Letter instead of a JOINT LETTER.

When the court asked Gottlieb's attorney for his position, he answered, stating that his position "**was *already in the Joint Letter* and identified, 'because Mr. Gottlieb was ultimately properly served,' i.e., he was not challenging the manner of service but rather its TIMING. A Motion . . . based on the insufficiency of service . . . clearly, would not have reached the issue of expiration of the statute of limitations. *Even though it was not eloquently stated, Gottlieb's position was clearly not abandoned.*"**

If Gottlieb waived or abandoned his rights and defenses, then one is forced to ask: how **redundant** must one be to protect himself in the midst of a vigorous battle? It is unfair and unjust for the court to jump to the conclusion that Gottlieb, at a pivotal point in the trial, would waive or abandon his defenses.

Should not a litigant be *fairly advised or warned; similar to a Miranda* that he may be relinquishing his rights and/or defenses, before the rug is pulled out from under him? To be fair, the court could simple ask the litigant, "Are you waiving your Statute of Limitations Defenses?" With a straightforward honest question addressed to the litigant, Gottlieb would have had the opportunity of making his intentions

clear with a single word, **"YES"** or **"NO,"** thus effectively and totally eliminating needless subjective interpretations and speculation, time consuming and redundant arguments, confusion and uncertainty relating to the issues, without the litigant's consent or permission and over his vigorous objections. Yet the court did just that; basing its ruling on a *Single Event* and totally disregarded the evidence already in the record which support the contrary conclusion!

The court made an **apocalyptic prejudicial ruling** when it pointed to a *single solitary event*, the "*Joint Letter*," which was embarrassingly and prejudicially misidentified in the court's **Order of July 8th** as the **"Plaintiff's (SEC's) Letter"** as and for the **ENTIRE** reason behind the ruling which effectively paralyzes Gottlieb's right to obtain a fair trial and to defend himself; thus denying Gottlieb his lawful statutory defenses without his knowledge, permission or consent; based upon the prejudicial assumption that Gottlieb's attorney was *not clear enough in a Joint Letter*, which the court embarrassingly misidentified as the SEC's Letter, when in fact it was a Joint Letter, which was deceitfully written on SEC letterhead, without titles showing that it represented the positions of both Gottlieb and the SEC.

Nevertheless, ***Gottlieb's position was stated in the Joint Letter***; perhaps not eloquently, but certainly ***sufficient*** for the court to recognize that Gottlieb was not walking away from his defenses, especially when he had come so far and fought so

hard and when the court was about to rule on the matter of jurisdiction and service issues.

To reiterate, Gottlieb's position was stated in the Joint Letter, **"because Mr. Gottlieb was ultimately properly SERVED,"** i.e., he once again redundantly brought up the service issue and certainly it would be quite an overreach to think Gottlieb was walking away at this point of the trial, that's for sure! That statement is clearly not challenging the manner of service, but rather the ***timeliness of service***, therefore still challenging the SEC's position on being granted enlargements and continuing to explore the position that the Statute of limitations had expired at the time Gottlieb was served and that the SEC should not have been granted any extensions.

The court is respectfully requested to point to a uniform "rule of litigation conduct" that demands **constant redundancy** to simply maintain one's statutory defenses, or that supersedes one's right to defend himself on established statutory grounds? There was no reason to assume that Gottlieb would abandon his defense and any conclusion to that effect is grossly unjust, unfair, unreasonable and contrary to and unsupported by the entire record and the facts.

The court stated that the ruling was based upon Gottlieb's attorney *not being responsive enough*. However, Gottlieb's attorney was apparently ***responsive enough during the entire trial***, hotly contesting jurisdiction and service issues at every opportunity. The court unjustly and unfairly did not accept

Gottlieb's attorney's position and did not allow the requested discovery to proceed, therefore denying Gottlieb his day in court, his right to defend himself and his right to receive a fair trial.

Even though Gottlieb's attorney may not have been eloquent enough, he did enough to continue to state Gottlieb's position and again Gottlieb's attorney reiterated his position when asked by the judge. Therefore, it was unjust and extremely prejudicial to conclude that Gottlieb abandoned or waived his defenses as there were numerous points on jurisdictional grounds and timely service issues in the record already which were raised and still remained unanswered.

In summation, the action against Gottlieb should have been dismissed long ago as there was no valid basis for the court to grant enlargements to the Statute of Limitations when it had already expired. Certainly, the court was wrong for not dismissing the action against Gottlieb when it was discovered that the SEC fraudulently withheld the real translation, while deceitfully giving the court a fraudulent translation of the Belgium Process Server's affidavit. Then denying Gottlieb the right to cross examine the US and Belgium Process Servers.

The court prejudicially avoiding ruling on, or even responding to, or mentioning the exculpatory newly discovered evidence, FBI Amicus Curiae Affidavit, which was submitted for the purpose of Relief under **Rule 60** which proved that Gottlieb was

clearly not a fugitive. Further, it was a clear error to label Gottlieb a fugitive in the face of all the testimony and evidence in the record to the contrary; and it was extremely prejudicial to deny Gottlieb's request for cross-examination of the Belgium and U.S. Process Servers, which prevented Gottlieb from obtaining a fair trial.

The point being that Gottlieb took advantage of every opportunity to defend himself on the Jurisdiction and services issues during the trial and in the briefs. These very issues were still being vigorously contested and were already part of the record. These defenses may have already vested in Gottlieb at that point in time of his defense which would demand a very high level of proof to come to the conclusion that Gottlieb intended to waive, abandon, or walk away from those hotly-contested issues, which are the core of Gottlieb's defense.

There is absolutely nothing substantial to point at, nor is there any clear indication supporting the ruling to deny Gottlieb his due process rights to defend himself. It is totally unreasonable and makes no sense whatsoever to make a ruling from the bench, in the midst of a hotly-contested trial, that Gottlieb abandoned, waived, or walked away from his right to defend himself on service and jurisdictional issues based upon a single event which turned out to be the court's embarrassingly misidentified "Joint Letter" as being the SEC's position instead of coming from both sides.

Granted that Gottlieb's attorney did not eloquently phrase his position, but it was equally apparent that Gottlieb's position was included in the Joint Letter and certainly the Joint Letter was not meant for the court to infer, much less conclude that Gottlieb was walking away from his service and jurisdictional defenses.

> For the court to strip Gottlieb of his right to continue to defend based upon a subjective and unreasonable conclusion, not supported by the entire record and was extremely prejudicial favoring the SEC, thereby denying Gottlieb his rights to due process, equal protection and his right to a fair trial.

QUESTION THREE. WHETHER THE COURT OF APPEALS ERRED BY AFFIRMING THE DISTRICT COURT'S DECISION DENYING THE ADMISSIBILITY OF THE ORIGINAL BANK SANTANDER COMMITMENT WHICH WAS SUBMITTED AFTER ONE YEAR FOR RELIEF UNDER RULE 60, AS THEIR AFFIRMATION INDICATES THAT THE FACTS REITERATED WERE TOTALLY MISAPPREHENDED ON CRITICAL CHRONOLOGICAL EVENTS, A 10-YEAR HIATUS BETWEEN THE HIDING AND THE FINDING, AS WELL AS THE LIFE THREATENING CIRCUMSTANCES RECOLLECTED IN GOTTLIEB'S TESTIMONY AND HIS BRIEF.

The Appellate Court totally misapprehended the *chronological events, timing and circumstance* presented in Gottlieb's brief and testimony in the record;

therefore, they could not make an accurate ruling when the facts were incorrect.

As submitted, after the death of the CIA Agent, Gottlieb was in fear for his life and for the safety of his family. Gottlieb, believing that the only way to protect himself and family was by *hiding* the Document, i.e., original Bank Santander Commitment, in his New York City apartment house *basement locker where he lived 10 years (1993) earlier, NOT in the Garage* as the court erroneously assumed. The bank commitment was found *10 years later by Gottlieb's wife in a box in a totally different home*!

It is unreasonable to assume that Gottlieb could have found this document earlier, as he testified that he looked high and low. This Commitment was essential to his defense and would have proven he lacked any trace of Scienter if presented to the court in the original trial.

The Court of Appeals was correct when they stated, "He knew of its existence" at the time of trial as Gottlieb testified at length about the Bank Commitment during his deposition before the SEC.

However, to assume that Gottlieb could *locate the Commitment 10 years later,* is totally incorrect, as it was lost due to circumstances generated from fear and preservation for his life and that of his family due to the "frightening death" of Bruce Anderson an associate of CIA Agent, Stein, is totally inaccurate.

Therefore, there is no just indication supporting the assumption that Gottlieb could have discovered the Bank Commitment 10 years later, when in his mind, it was lost *the moment he hid it in the apartment house locker in the basement.* It would be totally unjust to assume that Gottlieb, who tried diligently to locate the document, would not in fairness meet the criteria for **"reasonable diligence."**

The Bank Santander Commitment should be permitted into evidence **automatically** as supporting exculpatory evidence that was *already testified about in detail in Gottlieb's deposition* and if permitted into evidence, or an evidentiary hearing is ordered, it would be extremely weighty proof that Gottlieb lacked any trace of Scienter.

Especially, if the Bank Santander Commitment is examined and reviewed together with the Bell, Boyd and Lloyd Legal Opinion (20 pages of supporting documents in the record) and again with the meeting with American Express Bank in Paris, who also agreed, just like Eastland American Bank, to perform as a Trustee Bank. Putting all this together would be overwhelming additional proof that Gottlieb lacked any ingredient to form Scienter and considered with the *FBI Amicus Curiae Affidavit* previously identified, making Gottlieb qualify for **Rule 60(b)(6) relief, "any other reason that justifies relief"**; thus accepting the truth into the equation would certainly "prevent a grave miscarriage of justice"?

QUESTION FOUR. WHETHER THE COURT OF APPEALS ERRED WHEN THEY MISAPPREHENDED GOTTLIEB'S REQUEST FOR A REVIEW OF THE DISTRICT COURT'S MASSIVE NUMBER OF PREJUDICIAL RULINGS AS A TOTALITY; WHEN THE APPELLATE COURT RULED THAT THE SINGLE INCIDENT "TEMPEST WHICH TOOK PLACE BETWEEN THEM" WAS INSUFFICIENT GROUNDS; HOWEVER, THAT INCIDENT WAS MERELY MEANT TO IDENTIFY A *STARTING POINT* WHEN SUCH BIAS IN FAVOR OF THE SEC BEGAN; WITH RULINGS SUCH AS DENYING EXPERT TESTIMONY, DENYING CROSS-EXAMINATION, NOT RULING ON FBI AMICUS CURIAE AFFIDAVIT SUBMITTED UNDER RULE 60, PERMITTING THE SEC TO WITHHOLD BELGIUM PROCESS SERVER'S REAL TRANSLATION AND SUBSTITUTE ANOTHER EVEN THOUGH IT WAS IN THEIR POSSESSION, AND STRIPPING GOTTLIEB OF HIS RIGHTS TO DEFEND HIMSELF ON JURISDICTION AND SERVICE ISSUES, ETC., AS SPECIFICALLY MENTIONED IN THE BRIEF WHICH ALL OCCURRED AFTER THE "TEMPEST" AND WHICH DENIED GOTTLIEB HIS RIGHTS TO EQUAL PROTECTION AND DUE PROCESS.

CONCLUSION

THEREFORE, for all the reasons above and in the record, Gottlieb requests that the Supreme Court of the United States grant Certiorari, or any other relief it deems appropriate, thus preventing a grave miscarriage of justice.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

(Filed Jan. 27, 2009)

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE

DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of January, two thousand and nine.

Present: ROSEMARY S. POOLER,
SONIA SOTOMAYOR,
ROBERT A. KATZMANN,
Circuit Judges.

ALLEN GOTTLIEB,

Plaintiff-Appellant,

-v- 07-2389-cv

SECURITIES AND
EXCHANGE COMMISSION,

Defendant-Appellee.

Appearing for
Plaintiff-Appellant: Allen Gottlieb, Alexander E. Eisemann, Katonah, NY.

Appearing for
Defendant-Appellee: Christopher M. Bruckmann, Senior Counsel, Securities and Exchange Commission, Washington, DC.

Appeal from the United States District Court for the Southern District of New York (Preska, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Plaintiff-Appellant Allen Gottlieb appeals from the opinion and order, entered March 8, 2007, of the United States District Court for the Southern District of New York (Preska, *J.*) which denied his motions for: (1) relief from a final judgment, pursuant to Rule 60(b)(2) of the Federal Rules of Civil Procedure, because of newly discovered evidence and (2) recusal of Judge Preska, pursuant to 28 U.S.C. §§ 144 and 455, because of her alleged bias toward him. We affirm.

Rule 60(c)(1) of the Federal Rules of Civil Procedure provides that a Rule 60(b)(2) motion must be brought "no more than a year after the entry of the judgment" which the movant is challenging. We have stated that "[t]his limitations period is absolute." *Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000) (internal quotation marks omitted). The judgment being challenged by Gottlieb was entered on January 21, 2003; his Rule 60(b)(2) motion was filed on February 28, 2005. Accordingly, as the district court correctly held, the motion is untimely.

Gottlieb also contends that he brought his motion as an independent action and that therefore the time limitation does not apply. *See* Rule 60(d)(1) ("This

rule does not limit a court's power to . . . entertain an independent action."). But independent actions under Rule 60(d)(1) are available "only to prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 47 (1998). The purported recently discovered evidence upon which Gottlieb relies was at all times located in his own garage, and he knew of its existence at the time of trial. There is thus "no indication" that he "could not have discovered the evidence earlier," *Schwartz v. Capital Liquidators, Inc.*, 984 F.2d 53, 54 (2d Cir. 1993) (holding that district court did not abuse its discretion in denying Rule 60(b)(2) motion where evidence could have been discovered earlier), through "reasonable diligence." Rule 60(b)(2) (stating "reasonable diligence" requirement). Thus, because Gottlieb has failed to allege sufficient facts to meet the standard of an ordinary Rule 60(b)(2) motion, he certainly fails to meet the more stringent "grave miscarriage of justice" standard applicable to independent actions. *See Beggerly*, 524 U.S. at 47.

Gottlieb's motion for recusal is based upon the assertion that Judge Preska was relentlessly biased against him because of "the tempest which took place between them . . . when they clashed and had words in open court to the effect that Judge Preska said that 'I am God in my courtroom' and [he] defiantly responded with 'You are not God anywhere.'" Even assuming that Gottlieb accurately recounts this incident, it is clear "that 'expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women,

even after having been confirmed as federal judges, sometimes display' do *not* establish bias or partiality." *Francolino v. Kuhlman,* 365 F.3d 137, 143-44 (2d Cir. 2004) (quoting *Liteky v. United States,* 510 U.S. 540, 555-56 (1994)). Accordingly, the district court correctly found that Gottlieb's motion is without merit.

We have considered Gottlieb's remaining arguments and find them to be without merit.

For the reasons stated above, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLEN B. GOTTLIEB,	:	
Plaintiff,	:	
-against-	:	05 Civ. 2401 (LAP)
SECURITIES AND EXCHANGE COMMISSION,	:	OPINION AND ORDER
Defendant.	:	

LORETTA A. PRESKA, United States District Judge:

Plaintiff Allen B. Gottlieb ("Plaintiff"), proceeding *pro se,* brings this action seeking relief from a judgment entered in *SEC v. Stewart et al.,* No. 98 Civ. 2636 (LAP) (S.D.N.Y.) ("*Stewart*"). Plaintiff wishes to introduce new evidence in his defense pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Plaintiff also seeks to have the Court recuse itself from hearing his case any further, pursuant to 28 U.S.C. §§ 144 and 455. For the reasons set forth below, Plaintiff's motions are denied.

BACKGROUND

The Securities and Exchange Commission ("SEC") brought the underlying *Stewart* action against Plaintiff and other individuals and entities for violations of the antifraud provisions of both the Securities Act of 1933 and the Securities Exchange

Act of 1934. (Compl. at 3).[1] Plaintiff's case was tried before this Court in a four-day bench trial that commenced on December 9, 2002, and concluded on December 12, 2002. (Judgment at 1).[2]

On January 21, 2003, judgment was entered against Plaintiff in *Stewart*. That judgment became final on November 29, 2004, when Plaintiff's petition for writ of certiorari was denied by the Supreme Court. *See Gottlieb v. SEC,* 543 U.S. 1003. The present action was filed on February 28, 2005, a year and three months after the judgment in *Stewart* became final.

Plaintiff brings the present action *pro se*.[3] He seeks post-judgment relief because of newly discovered evidence pursuant to Rule 60(b)(2). Through the vehicle of this new case, Plaintiff attempts to introduce documents he claims were "discovered very recently in an old box in [his] garage that had not

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[1] "Compl." refers to the SEC's Complaint filed Apr. 14, 1998.

[2] "Judgment" refers to the Final Judgment against Defendant Allen B. Gottlieb, and Relief Defendants, Americredit Commercial Corporation, Law Offices of Gottlieb and Associates, P.C., and Finanzurich, Limited, No. 98 Civ. 2636(LAP) (S.D.N.Y.) entered Jan. 21, 2003.

[3] The Court will construe Plaintiff's claims liberally and hold papers submitted by him to a less stringent standard than those drafted by attorneys. *See Bobal v. Rensselaer Polytechnic Inst .*, 916 F.2d 759, 762 (2d Cir. 1990) (citing *Haines v. Kerner,* 404 U.S. 519, 520 (1972)).

been opened for over ten years." (Pl. Resp. at 4).[4] Plaintiff claims the documents are exculpatory evidence that would "probably result in the judgment against him [in *Stewart*] being overturned." (*Id.* at 5).

Plaintiff also alleges fraud by the SEC to support his claim for post-judgment relief under Rule 60(b)(3) or, alternatively, as an independent action. (Pl. Reply at 1).[5] Plaintiff's allegations of fraud upon the Court by the SEC include an attack on the SEC's calculations of sums to be disgorged by Plaintiff. (*Id.* at 8). These calculations were received into evidence against Plaintiff in the *Stewart* trial. (*Id.* at 7).[6] Plaintiff also accuses the SEC of knowingly submitting "fraudulent misrepresentations and spins" to the Court though a calculated program of making unsupported suggestions of his wrongdoing, misrepresenting evidence, and "fraudulently . . . providing the Court with Bank Records, of a bank error." [sic]. (*Id.* at 7, 12).

Finally, Plaintiff seeks to have this Court recuse itself from considering his post-judgment attacks. Plaintiff alleges that the Court is personally biased against him and partial to the SEC. (Id. at 1). In

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[4] "Pl. Resp." refers to Plaintiff's Response to Order to Show Cause and Motion to Recuse dated Nov. 28, 2005.

[5] "Pl. Reply" refers to Plaintiff's Reply to SEC's Response dated Feb. 17, 2005.

[6] "SEC Mem." refers to the SEC's Reply to Response of Plaintiff Gottlieb to Order to Show Cause and Response to Plaintiff's Motion to Recuse dated Jan. 31, 2006.

short, Plaintiff asserts that the SEC's "many frauds . . . have prejudiced [the Court's] opinion of [Plaintiff] beyond repair." (Pl. Resp. at 6). Plaintiff claims that the Court's rulings unfavorable to Plaintiff are evidence of the Court's bias. (*Id.* at 11). Plaintiff further claims that an exchange of words between Plaintiff and the Court regarding courtroom etiquette is additional evidence of the Court's bias. (*Id.* at 6).

DISCUSSION

1. One-Year Time Limit for Newly Discovered Evidence Under Rule 60(b)(2) And Fraud Under Rule 60(b)(3)

Rule 60(b)(2) permits the Court to grant relief from a final judgment for reason of newly discovered evidence. Fed. R. Civ. P. 60(b)(2). Rule 60(b)(3) permits post-judgment relief for reasons of fraud. Fed R. Civ. P. 60(b)(3). However, motions for reasons (2) and (3) must be made "not more than one year after judgment." Fed. R. Civ. P. 60(b).[7] This time constraint is absolute and controlling. *See In re Lawrence,* 293 F.3d 615, 626 (2d Cir. 2002) (upholding the one-year limit for a 60(b)(3) motion); *Freedom, N.Y., Inc. v. United States,* 438 F. Supp. 2d 457 (S.D.N.Y. 2006) (applying the one-year limit to bar motions under

[7] Rule 60(b)(1) permits post-judgment relief for reasons of "mistake, inadvertence, surprise, or excusable neglect" and is similarly subject to a one-year time restriction. Fed R. Civ. P. 60(b)(1).

Rule 60(b)(2) and (3)); *Cf. Ackerman v. United States*, 340 U.S. 193, 197 (1950) (a motion under Rule 60(b)(1) may not be made more than one year after judgment); *Stephanopoulos v. City of New York*, No. 01 Civ. 0771, 2007 WL 160819, at *3 (E.D.N.Y. Jan. 17, 2007) (holding that the one-year limitation must be strictly enforced, and finding a Rule 60(b)(1) motion filed one year and three months after the relevant order to be "far beyond the time limits").

Plaintiff's motion based on "newly discovered" documents is clearly time-barred, as Plaintiff seeks to file it more than one year after the judgment in *Stewart* became final. Accordingly, the Court will not reach the merits of Plaintiff's arguments that the purportedly new documents are exculpatory. Plaintiff's motion to introduce his "new" evidence is denied.[8]

2. Independent Action In Equity Under Rule 60(b)

The Court may entertain Plaintiff's motion as "an independent action . . . to set aside a judgment for fraud upon the court." Fed. R. Civ. P. 60(b). Rule 60(b) expressly "does not limit the power of the court" to do so. "This power is one that is rooted in tradition and governed by general equitable principals." *Treadaway v. Academy of Motion Picture Arts and Sciences*, 783

[8] Insofar as Plaintiff's claim of fraud is brought under Rule 60(b)(3), as opposed to as an independent action in equity, it is similarly time-barred and is denied.

F.2d 1418, 1420 (9th Cir. 1986). Nevertheless, Plaintiff's status as a *pro se* litigant does not excuse him from the requirement of producing "highly convincing evidence" in support of his independent action in equity. *Gil v. Vogilano,* 131 F. Supp. 2d 486, 494 (S.D.N.Y. 2001).

Plaintiff fails to describe any fraudulent action by the SEC. Plaintiff was not denied the opportunity to counter the SEC's evidence introduced during the trial in *Stewart.* Plaintiff's unsupported claim of fraud upon the Court fails to meet the standard of "highly convincing evidence." Accordingly, Plaintiff's independent action in equity is denied.

3. Recusal For Bias Or Partiality

Plaintiff's motion for recusal does not include a formal affidavit pursuant to 28 U.S.C. §§ 144 and 455(b)(1). Nonetheless, because Plaintiff appears *pro se,* the Court will construe his pleadings liberally and address the merits of his complaint. Plaintiff's complaint must include some "factual demonstration of bias," and "rulings made during the course of a case are generally not regarded as evidence of bias, even if they appear to disproportionately favor one side." *Hoatson v. New York Archdiocese,* No. 05 Civ. 10467, 2006 WL 3500633, at *2 (S.D.N.Y. Dec. 1, 2006); *Locasio v. United States,* 372 F. Supp. 2d 304, 315 (E.D.N.Y. 2005) (same).

A bias against a party must be extra-judicial in origin to require recusal. *See Liteky v. United States,*

510 U.S. 540, 550 (1994) ("The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant . . . [b]ut the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings.").

Plaintiff does not allege the Court's bias to stem from anything other than the Court's participation in his case. Thus, he fails to establish grounds for the Court's recusal. Accordingly, his motion for recusal is denied.

CONCLUSION

For the reasons set forth above, Plaintiff's motions for post-judgment relief and for recusal [dkt. nos. 1 and 10] are denied.

SO ORDERED:

DATED: New York, New York
February 23, 2007

/s/ Loretta A. Preska
LORETTA A. PRESKA, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. LONGO, Plaintiff, - against - ALLEN B. GOTTLIEB, ALLEN B. GOTTLIEB, P.C., KENNETH R. LAGONIA, AMERICREDIT INTERNATIONAL LIMITED, MICHAEL KONDRATIEV-KEIGH, KEIGH & ASSOCIATES, AND ROBERT BARDEY Defendants.	Index No. 94 Civ. 3034 (LAP) STIPULATION AND ORDER DISMISSING THE ACTIONS (Filed Aug. 1, 1995)
ALLEN B. GOTTLIEB, ALLEN B. GOTTLIEB, P.C., KENNETH R. LAGONIA, and AMERICREDIT INTERNATIONAL LIMITED, Third-Party Plaintiffs, - against - ROBERT J. LONGO, WILLIAM A. FELDMAN, and W.G. "WALLY" STEWART, Third-Party Defendants.	

WHEREAS, plaintiff Robert J. Longo ("Longo") by his Amended Complaint, dated August 26, 1994, (the "Action") has asserted certain claims against the defendants Allen B. Gottlieb, Allen B. Gottlieb, P.C., Kenneth R. Lagonia, and AmeriCredit International Limited (collectively, the "Gottlieb-Lagonia defendants"); and

WHEREAS, the Gottlieb-Lagonia defendants, by their Counterclaim and Third Party Complaint, dated January 25, 1995, asserted certain claims against plaintiff Longo and against third party defendants William A. Feldman ("Feldman") and W.G. "Wally" Stewart ("Stewart") (collectively, the "Third Party Action"); and

WHEREAS, by Stipulation and Order of this Court dated June 3, 1994, the sum of one million two hundred seventy five thousand dollars ($1,275,000.00) was deposited by the Gottlieb-Lagonia defendants into a Trust Account, [Financial Account Number Omitted], at Citibank, N.A., ("the Citibank Trust Account"), whereby such Citibank Trust Account funds plus interest accruing thereon were restrained to secure any judgment obtained by the plaintiff Longo against the Gottlieb-Lagonia defendants or any of them; and

WHEREAS, plaintiff Longo, third party defendant Feldman and the Gottlieb-Lagonia defendants desire to settle and resolve their respective claims against one another; and

WHEREAS, neither plaintiff Longo and third party defendant Feldman, nor the Gottlieb-Lagonia defendants, admits any fault or liability relating to any allegations contained in the Action or the Third Party Action, respectively; and

WHEREAS, the plaintiff Longo, third party defendant Feldman and the Gottlieb-Lagonia defendants have entered into a separate settlement agreement pursuant to which (a) the plaintiff Longo agreed to discontinue, with prejudice and without costs, the action against the defendants Allen B. Gottlieb, Allen B. Gottlieb, P.C., Kenneth R. Lagonia and AmeriCredit International Limited, and (b) counter-claimant and third party plaintiffs Allen B. Gottlieb, Allen B. Gottlieb, P.C., Kenneth R. Lagonia, and AmeriCredit International Limited agreed to discontinue, with prejudice and without costs, the Third Party Action and Counterclaims against third party defendants Robert J. Longo, William A. Feldman and W.G. "Wally" Stewart; it is hereby

ORDERED that Citibank, N.A. shall release the funds in the Citibank Trust Account, (Trust Account [Financial Account Number Omitted]), pursuant to written directions which will be given to Citibank and which must be signed by *both* (a) Richard Wasserman, Esq., attorney for the plaintiff Robert J. Longo and Third Party Defendant William A. Feldman and (b) Susan R. Necheles, Esq., attorney for the Gottlieb-Lagonia defendants; and it is further

ORDERED that, upon release of the Citibank Trust Account funds, (a) the Action against the defendants Allen B. Gottlieb, Allen B. Gottlieb, P.C., Kenneth R. Lagonia and AmeriCredit International Limited is dismissed with prejudice and without costs and (b) the Third Party Action and Counterclaims against Third Party Defendants Robert J. Longo, William A. Feldman and W.G. "Wally" Stewart are dismissed with prejudice and without costs; and it is further

ORDERED that the terms of this settlement, at the request of the parties, will be held confidential and that each of the parties, their principals and employees, and their attorneys are bound not to disclose the terms of the settlement to any third party unless required to do so pursuant to a subpoena and defendants are given 10 days notice by plaintiff, or ordered by a court of competent jurisdiction.

Dated: July 7, 1995
New York, New York

/s/ Richard Wasserman
Richard Wasserman
Sinnreich Wasserman
Grubin & Cahill, LLP
Attorneys for Plaintiff
Longo and Third-
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/s/ Susan R. Necheles
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Attorneys for
Defendants
Allen B. Gottlieb,
Allen B. Gottlieb, P.C.,
Kenneth R. Lagonia
and AmeriCredit
International Limited
500 Fifth Avenue
New York, NY 10110
(212) 997-7400

So ordered:

/s/ Loretta A. Preska
Loretta A. Preska U.S.D.J.

July 26, 1995

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. LONGO, Plaintiff, - against - ALLEN B. GOTTLIEB, ALLEN B. GOTTLIEB, P.C., KENNETH R. LAGONIA, AMERICREDIT INTERNATIONAL LIMITED, MICHAEL KONDRATIEV-KEIGH, KEIGH & ASSOCIATES, AND ROBERT BARDEY Defendants.	Index No. 94 Civ. 3034 (LAP) **STIPULATION OF DISMISSAL** (Filed August 1, 1995)

IT IS HEREBY STIPULATED, by and between the Attorneys for the undersigned parties, that whereas the undersigned parties are the only parties remaining in the litigation that have appeared, the above entitled action be, and hereby is, dismissed, with prejudice and without costs.

Dated: New York, New York
~~November~~ [December] 6, 1996

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By: /s/ Richard Wasserman
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By: /s/ Howard Mann
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[December 16, 1996 the Clerk of the Court shall mark this ac tion closed.

So ordered

/s/ Loretta A. Preslia
USDJ]

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of April, two thousand and nine,

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Allen Gottlieb,

Plaintiff-Appellant,

V.

Securities and Exchange Commission,

Defendant-Appellee.

ORDER
Docket Number:
07-2389-cv

(Filed Apr. 10, 2009)

Appellant Allen Gottlieb having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: /s/ Frank Perez
Frank Perez, Deputy Clerk

AFFIDAVIT

I, Gerard M. Forrester, FBI Special Agent retired am familiar with the facts in the matter 98-Civil-2628 (SEC V. Stewart/SEC v. Allen B. Gottlieb and Law Offices of Gottlieb and Associates) pertaining to the alleged attempted service of Mr. Gottlieb by the Securities and Exchange Commission (SEC).

I am now retired, after serving 30 (thirty) years with the Federal Bureau of Investigations (FBI). During this time I received numerous awards and accommodations and I am a FBI Star recipient.

From the years 1975-2001 I served as Supervisory Special Agent in Nassau, Bahamas and During that period, I was responsible for leading and directing a full range of FBI operations as Miami Liaison throughout the Caribbean Area.

As Special FBI Agent I coordinated National and International law enforcement investigations and was Assistant Resident FBI Agent in charge of Miami International Airport, Safety and Security and directed and coordinated all investigations at Miami International Airport.

Since my retirement I have organized and provided logistics for Secretary of State General Colin Powell at the Caribbean Chief of Police Conference and Caribbean Conclave on Terrorism.

As Special FBI Agent I was responsible for various organized crime and fugitive investigations.

I can personally verify that during the years 1994 to 2001, when I was Supervisory Special Agent in Nassau, Bahamas, the Securities and Exchange Commission (SEC) never made any inquiry of the FBI as to the whereabouts of Mr. Allen B. Gottlieb, who could have been located in 24 hours.

Further, that in my position at Supervisory Special Agent, I new of the location and whereabout of Mr. Gottlieb from the years 1997-2001, and that I met Mr. Gottlieb personally at a luncheon at the American Men's Club in Nassau, Bahamas during Christmas 1997 and have seen him at other locations and functions during my tenure in Nassau, Bahamas.

I am submitting this Affidavit without fee, or payment of any kind, because I believe it is important that the court knows the truth in this matter. Mr. Gottlieb lived openly in Nassau, Bahamas and could have been found easily with a simple inquiry to the FBI, which is a normal procedure and resource available to the SEC.

I, Gerard M. Forrester, do hereby swear this 12 Day of February, 2005 under penalty of perjury that the statement above is true and accurate to the best of my recollection.

/s/ Gerard M. Forrester
Gerard M. Forrester, FBI Special Agent Retired

ALLEN B. GOTTLIEB, Plaintiff-Appellant, Vs. Securities & Exchange Commission, Defendant, Appellees,	07-3489-cv **2ND MOTION FOR A 30 DAY EXTENSION OF TIME TO FILE THE BALANCE OF THE SUPPLEMENTAL APPENDIX** **MOTION NO LONGER REQUIRED**

Motion is hereby made by Allen B. Gottlieb, Pro Se, to the United States Court of Appeals for the Second Circuit requesting a Second Extension of 30 days time to file the balance of the Supplemental Appendix, which will contain certain documents which have previously been submitted to the court and are part of the record, but are being submitted in a Supplemental Appendix for your easy reference.

I am presently traveling outside of the Unites States and am depending upon others including the Law Firm of Gerstein, Salvage and Wolf, Mr. Robert Wolf, Esq. my former counsel to locate the documents from their storage.

Only today at 5:00 P.M. (December 13, 2007) have they located some of those documents, which I have submitted as part of the Supplemental Appendix.

Unfortunately, I am still missing the **1) Affidavit of FBI Special Agent Gerald Forrester and the 2) Original Bank Santander Commitment,** which

were both submitted to Judge Preska on Motion to receive exculpatory "Newly Discovered Evidence", but was denied. These documents go to the heart of my appeal and form a very important part of my appeal.

I am submitting those documents which were recovered to date. I sincerely appreciate your consideration of this matter. Respectfully submitted,

/s/ Allen B. Gottlieb

Allen B. Gottlieb, Pro Se
PTY #963
11010 NW 30th Street,
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Doral, Florida 33172-5032
December 14, 2007